HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2) (b)

Description of the case.

WP M/S No. 142/2004

State of Uttaranchal

Vs

Addl. Commissioner
Kumaon Division, Nainital

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 19.5.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL
WRIT PETITION NO. 142 (MS) OF 2004

1. State of Uttaranchal,
   through Principal Secretary,
   Govt. of Uttaranchal, Dehradun.
2. Collector, Udham Singh Nagar. .....Petitioners.

Versus

1. Addl. Commissioner, Kumaon Division, Nainital.
2. Prescribed Authority/ Addl. District Magistrate, Udham Singh Nagar.
3. Sri Deen Dayal, S/o Sri Hari Chandra,
4. Sri Pawam Kumar, S/o Sri Hari Chandra,
5. Smt. Sudesh Kumari, W/o Sri Mulakraj,
   Respondent Nos. 3 to 5, R/o Village Zaafarpur, Tehsil Gadarpur, District Udham Singh Nagar.
6. Ram Lal Kapoor, S/o Sri Kishori Lal Kapoor,
7. Chaman Lal Kapoor, S/o Sri Kishori Lal Kapoor,
   Respondent Nos. 6 & 7,
   R/o Bholanath Garden, Haldwani, District – Nainital.

.....Respondents.

Dated: 19.05.2006

Hon'ble Rajesh Tandon, J

Heard Sri R.C. Arya, Advocate for the petitioners and Sri S.G. Husnain, Sr. Advocate, assisted by Sri M.S. Tyagi, Advocate for the respondents.

By the present writ petition, the petitioners have prayed for a writ of certiorari quashing the order dated 11.07.2000 (Annexure No. 19 and impugned judgment and order dated 26.04.2002 passed by the Additional Commissioner, Kumaon Mandal, Nainital (Annexure No. 20).

Briefly stated the proceedings U/s 10(2) of the U.P. Imposition of Ceiling of Land Holdings Act, 1960 was initiated and the petitioner has submitted that the total land in the name of the original tenure holder was 317 Bigha 12 Biswa and 10 Biswansi i.e. 20.03 Hectare land, in which 0.070 Hectare land i.e. 1 Bigha 2 Biswa land was recorded as Abadi and the same was exempted. Further contention of the petitioners is that by virtue of Section 5 of the U.P. Imposition of Land Holdings Act, no tenure holder shall be entitled to hold in the aggregate throughout Uttar Pradesh and land in excess of the ceiling area applicable to him and the land in excess has to be declared surplus land of ceiling. Petitioner has preferred Sub-section 3 of Section 5 of the U.P. Imposition of Ceiling of Land Holdings Act, 1960. The same is quoted below:-

"5. Imposition of Ceiling-(3)-Subject to the provisions of Sub-Section (4), (5), (6) and (7) the ceiling area for purposes of Sub-Section (1) shall be-

(a) in the case of a tenure-holder having a family of not more than five members, 7.30 hectarte of irrigated land (including land held by other members of his family plus tow additional hectares of irrigated land or such additional land which together with the land held by him aggregates to two hectares, for each of his adult sons, who are either not themselves tenure-holders or who hold less than two hectares of irrigated land, subject to a maximum of six hectares of such additional land.

(b) in the case of a tenure-holders having family of more than five members, 7.30 hectartes of irrigated land (including land held by other members of his family), besides, each of the members exceeding five and for each of his adult sons who are not themselves tenure-holders or who hold less than two hectares or irrigated land, two additional hectares of irrigated land or such additional land which together with the land held by such adult son aggregate to two hectares, subject to a maximum of six hectares of such additional land.

Explanation – The expression 'adult son' in clauses (a) and (b) includes an adult son who is dead and has left surviving behind him minor not themselves tenureholders or who hold land less than two hectares of irrigated land,

(c) [omitted]
(d) [omitted]
(e) in the case of any other tenure-holder, 7.30 hectares of irrigated land

Explanation. *Any transfer or partition of land which is liable to be ignored under Sub-Section (6) and (7) shall be ignored also-*
(p) for purpose of determining whether an adult son of a tenure-holder is himself a tenure-holder within the meaning of [clause (a) or clause (b) of this Sub-Section].
q) for purpose of service of notice under Section 9."

The respondent has filed a written statement and has contested the proceedings by filing various affidavits. The prescribed Authority has framed following issues:-

''1. निर्धारित तिथि दि0 08.06.73 को मूल खातेदार हरी चन्द्र जीवित या नहीं । यदि वे जीवित थे तो उनके नाम जो भी भूमि दर्ज रही हो उसे एक यूनिट मानते हुए उक्त भूमि के सम्बन्ध में सीलिंग की कार्यवाही किया जाना उचित होगा भले ही विरासतन उक्त भूमि अब अन्य वारिसों के मध्य विभाजित हो गई हो।

2. उक्त निर्धारित तिथि में बालिग पुत्र मुलखराज को दो हेक्टेयर भूमि का लाभ दिया जाना चाहिये।

3. उक्त निर्धारित तिथि को दीन दयाल व पवन कुमार के अवयस्क होने के कारण उनहे दो दो हैक्टेयर का लाभ नहीं दिया जा सकता।

4. दीनदयाल को स्वतंत्र रूप से वर्ष 1981 में गवर्नमेन्ट ग्रान्टएण्क्ट के तहत आबंटन भूमि को इस कार्यवाही में सम्मिलित नहीं किया गया है।

5. आधार वर्ष के राजस्व अभिलेखों के बयानों के अनुसार जो भूमि सिंचित मानी गई है वह ठीक है और जो भी असिंचित मानी गई है उसे यथावत असंचित माना जाय।

6. यदि निधारित तिथि दिनांक 08.06.73 से पूर्व हरी की मृत्यु हो चुकी थी जो सभी वारिसों को स्वतंत्र रूप से खातेदार मानना उचित होगा और संयुक्त परिवार व सम्मिलित खेती होने से सम्बन्ध में फिर से पक्षों को साक्ष्य व सुनवाई का अवसर देकर सभी की भूमि सम्मिलित किये जाने के सम्बन्ध में निष्कर्ष निकाला जाना उचित होगा। मृतक पुत्र मुलख राज की पत्नी की

भूमि परिवार की परिभाषा में न होने के कारण सम्मिलित नहीं की जा सकती ।''

So far as the death of Hari Chand is concerned, on behalf of the respondents/tenure holder Khatauni of 1380 to 1382 was produced where Hari Chand has been shown to be in possession of Gata No. 61/1 area 24 Bigha two Biswa, Gata No. 61/02 Area 0.05 Biswa, Gata No. 61/04 Area 25 Bigha, Gata No. 68 Area 84 Bigha 17 Biswa, Gata No. 61/05 Area 25 Bigha, Gata No. 61/03 Area 24 Bigha 3 Biswa, Gata No. 72/1 Area 12 Bigha. On 5th March, 1979, in place of Hari Chandra (deceased), his sons Mulk Raj, Deen Dayal and Pawan Kumar were recorded and further name of his wife Smt. Kaushalya Devi was recorded and further in respect of Gata No. 69/01 Area No. 15 Bigha 10 Biswa, Gata No. 22/1 Area 1 Bigha Gata No. 72/5 Area 9 Bigha, the name of Hari Chand was deleted and the names of his sons and wife were recorded in Varg-4 and the death certificate has also been issued on 20th June, 1972. Further in 1378 – 1380 Fasli Khasra 13, the name of Hari chand has been deleted and mutation had already taken place on 5th March, 1973. the parties have also led the oral evidence in order to prove that after the death of Hari Chand, all the names of three brothers were recorded on 6th March, 1973 and as such the Prescribed Authority has recorded a finding that the names of all the sons were recorded before 8th June, 1973, counsel for the respondents has referred Section 5 as amended on 08.06.1973 to the following extents:-

"5. Imposition of Ceiling-(3)-Subject to the provisions of Sub-Section (4), (5) (6) and (7) the ceiling area for purposes of Sub-Section (1) shall be-

(a) in the case of a tenure-holder having a family of not more than five members, 7.30 hectarte of irrigated land (including land held by other members of his family plus towadditional hectares of irrigated land or such additional land which together with the land held by him aggregates to two hectares, for each of his adult sons, who are either not themselves tenure-holders or who hold less than two hectares of irrigated land, subject to a maximum of six hectares of such additional land.

(b) in the case of a tenure-holders having family of more than five members, 7.30 hectartes of irrigated land (including land held by other members of his family), besides, each of the members exceeding five and for each of his adult sons who are not themselves tenure-holders or who hold less than two hectares or irrigated land, two additional hectares of irrigated land or such additional land which together with the land held by such adult son aggregate to two hectares, subject to a maximum of six hectares of such additional land.

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Explanation. *Any transfer or partition of land which is liable to be ignored under Sub-Section (6) and (7) shall be ignored also-*

(p) for purpose of determining whether an adult son of a tenure-holder is himself a tenure-holder within the meaning of [clause (a) or clause (b) of this Sub-Section].

q) for purpose of service of notice under Section 9."

As will appear that the cealing area has to be determined from 8th June, 1973 as inserted by U.P. Act No. 2 of 1975. The prescribed authority therefore, has recorded a finding that on the date of enforcement i.e. from 8th June, 2003, the names of the sons were already recorded and as such notice issued for declaring the surplus was rightly quashed by the prescribed authority. The State has went in appeal. The appellate Court has recorded a finding to that effect that before 8th June, 1973 the names of Mulk Raj, Deen Dayal and Pawan Kumar were separate khata holders and as such in accordance with the explanation no. 1 of Section 5, the notices were issued under the U.P. Imposition of Ceiling On Land Holdings Act, 1960 was wholly illegal and has rightly been quashed. I do not find any material to interfere with the findings given by the court below under Article 226/227 of the Constitution of India.

In ***Surya Dev Rai Vs. Ram Chander SCC 2003 Vol-6 675,*** the Apex Court has held as under:-

"Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or

grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction."

" Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirement are satisfied: (i) The error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby."

" A patent error is an error which is self-evident i.e. which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view, the error cannot be called gross or patent."

" The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumstance need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or correction is yet capable of being corrected at the conclusion of the proceedings is an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and or early disposal of the suit of proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that every moment, may become incapable of correction at a letter

stage and refused to intervene would result in stravesty of justice or where such refusal itself would result in prolonging of the lis."

"The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character."

Relying upon the Judgment of ***Surya Dev Rai Vs. Ram Chandra 2003 (6) SCC 675,*** the Apex Court in ***Ranjeet Singh Vs. Ravi Prakash 2004 (3) SCC 682,*** has held as under:-

"As to the exercise of supervisory jurisdiction of the High Court under Article 227 of the Constitution of India also, it has been held in ***Surya Dev Rai*** *that the jurisdiction was not available to be exercised for indulging in reappreciation or evaluation of evidence or correcting the errors in drawing inferences like a court of appeal."*

In view of the aforesaid judgments, writ petition lacks merit and is dismissed. No order as to costs.

(Rajesh Tandon, J.)

Dated: 19.05.2006
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